

No. 83-1230

Supreme Court, U.S.

FILED

FEB 24 1984

ALEXANDER L. STEVENS

CLERK

---

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1983

---

CAPITOL HILL DODGE, INC., *et al.*,  
*Petitioners,*  
v.  
CHRYSLER CREDIT CORPORATION,  
*Respondent.*

---

On Petition For Writ Of Certiorari To The United States  
Court Of Appeals For The District Of Columbia Circuit

---

**MOTION OF RESPONDENT FOR DAMAGES**

---

JOHN T. COYNE,  
*Counsel of Record*  
DAVID P. DURBIN  
KATHY S. TYSON  
JORDAN COYNE SAVITS & LOPATA  
1030 15th Street, N.W.  
Suite 500  
Washington, D.C. 20005  
(202) 371-1800

February 1984

# TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Armory v. Armory</u> , 91 U.S. 356 (1876) . . . . .	2
<u>Garcia v. United States</u> , 77 L.Ed.2d 1346 (1983) . . . .	3
<u>Gullo v. McGill</u> , 77 L.Ed.2d 1328 (1983) . . . . .	3
<u>Pullman-Standard v. Swint</u> , 456 U.S. 305 (1982). . . . .	4
<u>Tatum v. Regents of the University of Nebraska- Lincoln</u> , 77 L.Ed.2d 1346 (1983) . . . . .	3
<u>Texas &amp; Pacific Railway Company v. Volk</u> , 151 U.S. 73 (1894) . . . . .	2,7
<u>Whitney v. Cook</u> , 99 U.S. 607 (1879) . . . . .	2

MOTION OF RESPONDENT FOR DAMAGES

Respondent, Chrysler Credit Corporation, by counsel, respectfully moves that this Honorable Court grant respondent an award of damages, pursuant to Supreme Court Rule 49.2, for the reasons set forth below.

Supreme Court Rule 49.2 provides that "[w]hen an appeal or petition for writ of certiorari is frivolous, the Court may award the appellee or respondent appropriate damages". Petitioners' petition for writ of certiorari is clearly frivolous, and is brought only for the purpose of delay without reasonable cause.

The power of this Court to award damages to discourage frivolous appeals and petitions for writs of certiorari is long

standing. In 1876, this Court stated that "[w]e can adjudge damages... in all cases where it appears that a writ of error has been sued out merely for delay. This gives us the only power we have to prevent frivolous appeals and frivolous writs of error; and we deem it not improper to say that this power will be exercised without hesitation in all cases where we find that our jurisdiction has been invoked merely to gain time". Armory v. Armory, 91 U.S. 356 (1876). Similarly, in Texas & Pacific Railway Company v. Volk, 151 U.S. 73, 75 (1894), this Court stated that where a writ of error appeared to have no plausible ground to support it, it would be assumed that it was sued out for the purpose of delay, and damages would be awarded. See also Whitney v. Cook, 99 U.S. 607 (1879)

(parties should not be subject to delay without reasonable cause, and the power to compensate for unwarranted delay ought not to be overlooked).

This venerable power of the Court to award damages is embodied in Supreme Court Rule 49.2. The Court continues to exercise its power to award damages pursuant to this rule. See Tatum v. Regents of the University of Nebraska-Lincoln, 77 L.Ed.2d 1346 (1983) (damages awarded to respondents in the amount of \$500.00 pursuant to Supreme Court Rule 49.2); Garcia v. United States, 77 L.Ed.2d 1346 (1983) (The Chief Justice, Justice Rehnquist and Justice O'Connor would award respondent damages pursuant to Supreme Court Rule 49.2); Gullo v. McGill, 77 L.Ed.2d 1328 (1983) (The Chief Justice, Justice Rehnquist and

Justice O'Connor would award appellees damages pursuant to Supreme Court Rule 49.2).

The petition for writ of certiorari of Denniberg and Capitol Hill Dodge, Inc. has no plausible ground to support it. The petitioners formulate no issues of law, and do no more than reargue the facts without even discussing the "clearly erroneous" standard which must be applied to the decision below. Pullman-Standard v. Swint, 456 U.S. 305, 313 (1982) (a trial court's factual findings may not be set aside unless clearly erroneous). Not only do petitioners reargue the facts, but they do so knowing that this case has already had the benefit of two evidentiary hearings by the Honorable John Penn, District Judge for the District of Columbia, and the benefit

of review by the ten active judges of the full U.S. Court of Appeals for the D.C. Circuit. Not a single member of the full Court requested that a vote be taken on the suggestion for a rehearing en banc. (Pet. 12-14; Pet. App. A-40, A-41.)<sup>1/</sup>

Petitioners do not formulate or discuss a single legal issue in the twenty-eight pages of text in their petition. Although petitioners summarily invoke the Fourteenth Amendment to the Constitution of the United States, they do not mention it in their "Reasons for Granting the Writ", and fail to cite any other legal authority in support of their

---

<sup>1/</sup> The opinion and judgment below are contained in appendices to the Petition and will be cited as Pet. App. \_\_\_\_\_. The Petition will be cited as Pet. \_\_\_\_\_. The Opposition to the Petition will be cited as Opp. to Pet. \_\_\_\_\_.

reasons. (Pet. 3, 17-27.) Petitioners further omit any reference to the considerations governing review of certiorari, as provided under Supreme Court Rule 17, and could not satisfy any of these considerations even if they had discussed them. (See Opp. to Pet. 22-25.)

Petitioners have obdurately evaded the duties encompassed in the August 30, 1979 Settlement Agreement for several years. The petition for writ of certiorari is consistent with their history of evasion, and no reason other than delay appears to have caused the petitioners to seek review by this Court. As this Court once stated, where a writ appears to have no plausible ground to support it, it will be assumed that it was filed with the purpose of



delay, and damages will be warranted.

Texas & Pacific Railway Company v. Volk,  
151 U.S. 73, 75 (1894).

In sum, petitioners have sought review in this Court for frivolous reasons and respondent accordingly seeks damages, both for delay and the necessity of responding to the petition for writ of certiorari.

WHEREFORE, respondents respectfully pray that this Honorable Court award damages to them, pursuant to Supreme Court Rule 49.2, and such further relief as may be deemed necessary.

Respectfully submitted,

JORDAN COYNE SAVITS & LOPATA

By

---

John T. Coyne\*  
David P. Durbin  
Kathy S. Tyson  
1030 15th Street, N.W.  
Suite 500  
Washington, D.C. 20005  
(202) 371-1800

Counsel for Respondent  
Chrysler Credit  
Corporation

\*Attorney of Record